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OFFICE OF PETITIONS

In re Application of :
Trachewsky et al. :
Application No. 09/825,775 :
Filed: 4 April, 2001 :
Att'ys Docket No. 42140/RJP/E264 :

ON PETITION

Receipt is acknowledged of the petition filed on 8 January, 2002, requesting that the "Notice of Incomplete Reply" mailed on 11 October, 2001, be withdrawn.

The petition is dismissed.

The application was filed on 4 April, 2001. Accordingly, on 31 July, 2001, Initial Patent Examination Division mailed a Notice to File Corrected Application Papers because the drawings as filed did not have appropriate margins. In response, on 31 August, 2001, petitioners filed formal drawings. On 11 October, 2001, however, Initial Patent Examination Division mailed a Notice of Incomplete Reply (Nonprovisional) stating that Figures 70a and 70b described in the specification appeared to have been omitted. In response, on 8 January, 2002 (certificate of mailing date 26 October, 2001), the present petition was filed.

Petitioners assert that no drawing figures were omitted, that rather than Figures 70a and 70b the drawings correctly contained a Figure 70, and that a preliminary amendment had been submitted with the original application papers removing the references in the specification to Figures 70a and 70b and replacing them with a reference to Figure 70.

A review of the official file reveals that a preliminary amendment was filed with the application papers received on 4 April, 2001, which provided, in pertinent part:

Please amend the specification as follows:

Delete the paragraphs on Page 11, lines 11-19, and replace them with the following new paragraphs:

-- Fig. 70 shows a VoIP system in accordance with the present invention.

...

It is noted, however, that the reference to Figures 70a and 70b appears on line 9 of page 11 rather than lines 11-19. Thus, the preliminary amendment did not delete the references to Figures 70a and 70b.

It is obvious from the petition that no drawings were actually missing on 4 April, 2001. Rather, the specification incorrectly referred to Figures 70a and 70b rather than Figure 70 as a result of the applicants' filing error. However, the "Notice" mailed on 21 September, 2001, was correct in stating that Figures 70a and 70b described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

Petitioners should note that the "Notice to File Corrected Application Papers" is sent if the drawings are not acceptable for purposes of publication of the patent application.¹ The initial review of drawings for consistency with the specification may not occur until after drawings in compliance with 37 CFR 1.84 have been received.

The present petition was not necessitated by any error on the part of the Office and the \$130.00 petition was required upon filing of the petition. Thus, the \$130.00 petition fee will not be refunded.

Petitioners should file a preliminary amendment correcting the references to Figures 70a and 70b in the specification prior to the first Office action to avoid confusion.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 4 April, 2001.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹MPEP 608.02(a), 37 CFR 1.85.